

## Pension Benefit Guaranty Corporation

## § 4219.31

employers have withdrawn, describe the consequences of such withdrawal under this section, and state that an employer obligated to make initial withdrawal liability payments shall continue to make those payments in accordance with its schedule.

(e) *Notice of liability.* Within 30 days after the determination of liability, the plan sponsor shall issue a notice of liability in writing to each liable employer. The notice shall include—

(1) The amount of the employer's liability for *de minimis* amounts;

(2) A schedule for payment of the liability, determined under § 4219.16(f); and

(3) A demand for payment of the liability in accordance with the schedule.

(f) *Review of liability determinations.* Determinations of liability made pursuant to this section shall be subject to plan review under section 4219(b)(2) of ERISA and to arbitration under section 4221 of ERISA, subject to the limitations contained in § 4219.16(g).

(g) *Notice to the PBGC.* No later than 30 days after the notices of liability under this section are required to be provided to liable employers, the plan sponsor shall file with the PBGC a notice. The notice shall include the items described in § 4219.17 (g)(1) through (g)(3), as well as the information listed below. In addition, the PBGC may require the plan sponsor to submit any further information that the PBGC determines it needs in order to monitor compliance with this section.

(1) The plan year in which the withdrawal occurred.

(2) A description of the effect of the withdrawal, including the number of contributing employers that withdrew in the plan year in which substantially all employers withdrew, the number of employers remaining in the plan, and a description of the effect of the withdrawal on the plan's contribution base.

(3) A certification, signed by the plan sponsor or duly authorized representative, that determinations have been made and notices given in accordance with this section.

### § 4219.19 Information collection.

The information collection requirements contained in §§ 4219.16, 4219.17,

and 4219.18 have been approved by the Office of Management and Budget under control number 1212-0034.

## Subpart C—Overdue, Defaulted, and Overpaid Withdrawal Liability

### § 4219.31 Overdue and defaulted withdrawal liability; overpayment.

(a) *Overdue withdrawal liability payment.* Except as otherwise provided in rules adopted by the plan in accordance with § 4219.33, a withdrawal liability payment is overdue if it is not paid on the date set forth in the schedule of payments established by the plan sponsor.

(b) *Default.* (1) Except as provided in paragraph (c)(1), “default” means—

(i) The failure of an employer to pay any overdue withdrawal liability payment within 60 days after the employer receives written notification from the plan sponsor that the payment is overdue; and

(ii) Any other event described in rules adopted by the plan which indicates a substantial likelihood that an employer will be unable to pay its withdrawal liability.

(2) In the event of a default, a plan sponsor may require immediate payment of all or a portion of the outstanding amount of an employer's withdrawal liability, plus interest. In the event that the plan sponsor accelerates only a portion of the outstanding amount of an employer's withdrawal liability, the plan sponsor shall establish a new schedule of payments for the remaining amount of the employer's withdrawal liability.

(c) *Plan review or arbitration of liability determination.* The following rules shall apply with respect to the obligation to make withdrawal liability payments during the period for plan review and arbitration and with respect to the failure to make such payments:

(1) A default as a result of failure to make any payments shall not occur until the 61st day after the last of—

(i) Expiration of the period described in section 4219(b)(2)(A) of ERISA;

(ii) If the employer requests review under section 4219(b)(2)(A) of ERISA of the plan's withdrawal liability determination or the schedule of payments established by the plan, expiration of

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the period described in section 4221(a)(1) of ERISA for initiation of arbitration; or

(iii) If arbitration is timely initiated either by the plan, the employer or both, issuance of the arbitrator's decision.

(2) Any amounts due before the expiration of the period described in paragraph (c)(1) shall be paid in accordance with the schedule established by the plan sponsor. If a payment is not made when due under the schedule, the payment is overdue and interest shall accrue in accordance with the rules and at the same rate set forth in § 4219.32.

(d) *Overpayments.* If the plan sponsor or an arbitrator determines that payments made in accordance with the schedule of payments established by the plan sponsor have resulted in an overpayment of withdrawal liability, the plan sponsor shall refund the overpayment, with interest, in a lump sum. The plan sponsor shall credit interest on the overpayment from the date of the overpayment to the date on which the overpayment is refunded to the employer at the same rate as the rate for overdue withdrawal liability payments, as established under § 4219.32 or by the plan pursuant to § 4219.33.

### **§ 4219.32 Interest on overdue, defaulted and overpaid withdrawal liability.**

(a) *Interest assessed.* The plan sponsor of a multiemployer plan—

(1) Shall assess interest on overdue withdrawal liability payments from the due date, as defined in paragraph (d) of this section, until the date paid, as defined in paragraph (e); and

(2) In the event of a default, may assess interest on any accelerated portion of the outstanding withdrawal liability from the due date, as defined in paragraph (d) of this section, until the date paid, as defined in paragraph (e).

(b) *Interest rate.* Except as otherwise provided in rules adopted by the plan pursuant to § 4219.33, interest under this section shall be charged or credited for each calendar quarter at an annual rate equal to the average quoted prime rate on short-term commercial loans for the fifteenth day (or next business day if the fifteenth day is not a business day) of the month preceding

the beginning of each calendar quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 (“Selected Interest Rates”).

(c) *Calculation of interest.* The interest rate under paragraph (b) of this section is the nominal rate for any calendar quarter or portion thereof. The amount of interest due the plan for overdue or defaulted withdrawal liability, or due the employer for overpayment, is equal to the overdue, defaulted, or overpaid amount multiplied by:

(1) For each full calendar quarter in the period from the due date (or date of overpayment) to the date paid (or date of refund), one-fourth of the annual rate in effect for that quarter;

(2) For each full calendar month in a partial quarter in that period, one-twelfth of the annual rate in effect for that quarter; and

(3) For each day in a partial month in that period, one-three-hundred-sixtieth of the annual rate in effect for that month.

(d) *Due date.* Except as otherwise provided in rules adopted by the plan, the due date from which interest accrues shall be, for an overdue withdrawal liability payment and for an amount of withdrawal liability in default, the date of the missed payment that gave rise to the delinquency or the default.

(e) *Date paid.* Any payment of withdrawal liability shall be deemed to have been paid on the date on which it is received.

### **§ 4219.33 Plan rules concerning overdue and defaulted withdrawal liability.**

Plans may adopt rules relating to overdue and defaulted withdrawal liability, provided that those rules are consistent with ERISA. These rules may include, but are not limited to, rules for determining the rate of interest to be charged on overdue, defaulted and overpaid withdrawal liability (provided that the rate reflects prevailing market rates for comparable obligations); rules providing reasonable grace periods during which late payments may be made without interest; additional definitions of default which indicate a substantial likelihood that an employer will be unable to pay its